

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

KORI LANE LAKE,

Plaintiff,

vs.

MIKE MAHONEY, TAMARA
SUNDERLAND, and DR. SCHAEFER

Defendants.

Cause No. CV-07-008-H-DWM-RKS

FINDINGS AND RECOMMENDATION
OF UNITED STATES MAGISTRATE
JUDGE TO DISMISS COMPLAINT
WITHOUT PREJUDICE

This matter originated with Plaintiff filing a Complaint pursuant to 42 U.S.C. § 1983 on January 18, 2007. (Document 1). Plaintiff is a pro se prisoner litigant who was granted permission to proceed in forma pauperis on February 14, 2007. (Document 7). Plaintiff is currently incarcerated at Montana State Prison in Deer Lodge, Montana. The Court has jurisdiction pursuant to 28 U.S.C. § 1331.

On June 25, 2007, Plaintiff filed a Motion to Dismiss his Complaint without prejudice. (Document 41). The Court construes Plaintiff's motion as one being made under Rule 41(a)(2) of the Federal Rules of Civil Procedure. Although Defendants Mahoney and Schaefer filed a Motion for Summary Judgment after Plaintiff filed his motion to dismiss, they have not responded to the motion to dismiss. Pursuant to Local Rule 7.2(i), the failure to respond to a motion by the adverse party shall be deemed an admission that the motion is well taken.

FINDINGS AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE TO
DISMISS COMPLAINT WITHOUT PREJUDICE / PAGE 1

Accordingly, the Court enters the following:

RECOMMENDATION

That Plaintiff's Motion to Dismiss Complaint without Prejudice (Document 41) be **GRANTED**. Plaintiff's Complaint should be **DISMISSED WITHOUT PREJUDICE** and the case should be closed.

**NOTICE OF RIGHT TO OBJECT TO FINDINGS & RECOMMENDATION AND
CONSEQUENCES OF FAILURE TO OBJECT**

Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to this Findings and Recommendations within ten (10) business days of the date entered as indicated on the Notice of Electronic Filing. A district judge will make a de novo determination of those portions of the Findings and Recommendations to which objection is made. The district judge may accept, reject, or modify, in whole or in part, the Findings and Recommendations. Failure to timely file written objections may bar a de novo determination by the district judge.

**PLAINTIFF IS CAUTIONED THAT HE MUST KEEP THE COURT ADVISED
OF ANY CHANGE OF ADDRESS AND A FAILURE TO DO SO COULD RESULT THE
DISMISSAL OF THIS CAUSE OF ACTION WITHOUT FURTHER NOTICE TO HIM.**

DATED this 2nd day of August, 2007.

/s/ Keith Strong
Keith Strong
United States Magistrate Judge